

Panaji, 17th March, 2022 (Phalguna 26, 1943)

SERIES II No. 51

OFFICIAL GAZETTE



GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There are six Extraordinary issues to the Official Gazette, Series II No. 50 dated 10-03-2022 as follows:—

- (1) *Extraordinary dated 10-03-2022 from pages 1363 to 1374 regarding Notification from Department of Elections.*
- (2) *Extraordinary (No. 2) dated 10-03-2022 from pages 1375 to 1380 regarding Notification from Department of Elections.*
- (3) *Extraordinary (No. 3) dated 12-03-2022 from pages 1381 to 1382 regarding Notification from Department of General Administration.*
- (4) *Extraordinary (No. 4) dated 12-03-2022 from pages 1383 to 1384 regarding Notification from Department of General Administration.*
- (5) *Extraordinary (No. 5) dated 14-03-2022 from pages 1385 to 1386 regarding Notifications from Goa Legislature Secretariat.*
- (6) *Extraordinary (No. 6) dated 15-03-2022 from pages 1387 to 1388 regarding Notification from Department of Finance.*

GOVERNMENT OF GOA

Goa Human Rights Commission

Office of the Goa Human Rights Commission

Proceeding No. 41/2015

Inquiry Report

By Order No. DA/Admn/45-2/2013-2014/TR-2694/68 dated 30-12-2013 issued by the Director of Accounts, Panaji-Goa, the Complainant/Smt. Aruna M. Phadte was posted as Dy. Director of Accounts on deputation with Entertainment Society of Goa, Panaji-Goa. The Complainant resumed her duties on 01-01-2014 as Dy. Director of Accounts/Manager Accounts of Entertainment Society of Goa. The Complainant applied for Child Care Leave w.e.f. 04-03-2014 to 22-08-2014 which was sanctioned by the Chief Executive Officer, Entertainment Society of Goa.

2. The grievance of the Complainant is that the Chief Executive Officer and the General Manager, Entertainment Society of Goa withheld her salary for the period of her Child Care Leave from April, 2014 till August, 2014 without her fault.

3. Taking cognizance of the complaint, this Commission issued notices to (1) General Manager, Entertainment Society of Goa and (2) the Director of Accounts, Panaji-Goa. In pursuance of the notice, the Respondent No. 1/General Manager, Entertainment Society of Goa filed reply dated 06-01-2016. It is stated by Respondent No. 1 that the Complainant applied for Child Care Leave from 04-03-2014 to 22-08-2014. Her leave was sanctioned by Entertainment Society of Goa. The Entertainment Society of Goa requested the Director of Accounts to post a substitute during the leave period of the Complainant. However, no substitute was sent to the Entertainment Society of Goa. Thereafter, the Chief Executive Officer issued Relieving Order to the Complainant by letter dated 28-03-2014 and by Order dated 08-04-2014, the Complainant was relieved from Entertainment Society of Goa.

4. It is further the case of the Respondent No.1 that the Director of Accounts sought for clarification from Entertainment Society of Goa as to how the Complainant was relieved without Government approval and how Child Care Leave was sanctioned to the Complainant when it was strictly prohibited due to ensuing Lok Sabha Elections. The Respondent No.1 has also stated that the matter was placed before Executive Council as the matter was involving administrative difficulties in

releasing salary of the Complainant. It is also stated that there was no sitting of the Executive Council for about nine months and as such the matter was kept on hold. After the decision of the Chairman, Executive Council salary which was kept on hold was released.

5. This matter came up for final hearing on 11-01-2017 on which date the Respondents did not remain present. It was noted that the Respondents did not remain present on several occasions and opportunities were given to the Respondents including final opportunities by making it clear that the matter shall proceed in their absence in case the Respondents do not remain present on the next date of hearing i.e. on 09-02-2017. It is regretted to note that inspite of giving several opportunities the Respondents did not remain present on 09-02-2017.

6. We have heard the Learned Advocate Shri G. Sambhari for the Complainant. We have also perused the records of this case.

7. There is no dispute that the salary of the Complainant for the period from 04-03-2014 to 22-08-2014 was kept on hold by the Respondent No.1 and the same was released on 29-10-2015. Thus it is apparent that there was a delay of about 20 months in making payment of the salary of the Complainant. Therefore, the only question for our determination is whether this inordinate delay has been satisfactorily explained by Respondent No. 1. A feeble attempt has been made by Respondent No. 1 to justify the delay on a spacious plea that there was administrative difficulty in releasing the salary. It is also pleaded that there was no Executive Council Meeting for almost 9 months and hence due to non-sitting of Executive Council the matter was kept on hold. We are unable to persuade ourselves about the explanation sought to be given by Respondent No.1 which has no legs to stand. The justification given by Respondent No.1 to justify the inordinate delay cannot be accepted. The Respondent No.1 has acted in a very irresponsible manner. There was nothing to prevent Respondent No.1 from holding emergency or extraordinary meeting of the Executive Council to discuss the important issue of releasing the salary of the Complainant which has not been done for reasons best known to Respondent No. 1. This inordinate delay in releasing the salary of the Complainant undoubtedly amounts to infringement of fundamental rights of the Complainant as guaranteed under Article 21 of the Constitution of India and also amounts to violation of basic human rights of the Complainant.

8. In the case of Kapila Hingorani V/s State of Bihar reported in AIR 2005 S.C 980 Supreme Court held "**Where employees of Public Sector undertaking were not paid salaries for years and were starving and State bound to protect human rights and fundamental rights directed to deposit sum of Rupees 125.50 crores for payment of arrears of Salaries**".

9. In the case of **Prof. Devendra Mishra v/s University of Delhi & Ors.** the Delhi High Court in W.P. (C.) No. 5075/2207 delivered on 16-02-2010 has observed as follows:

"A salaried person by and large depends upon income from salary for his sustenance and sustenance of his family and if he is not paid salary despite working for a long period, it will affect his life and liberty? This, in the opinion of this Court amounts to denial of basic human rights of a citizen and would also amount to deprivation of his life and liberty guaranteed to every citizen under Article 21 of the Constitution of India."

10. The justification given by the Respondent No. 1 for delay in payment of salary to the Complainant does not appeal to our mind at all. It appears that the delay in payment of salary was intentional and smacks malafide. The Complainant has to undergo mental agony and also has suffered heavy financial losses on account of delay in payment of her salary. We therefore feel that this is an appropriate case to recommend reasonable compensation to the Complainant on account of hardships she has to suffer due to inordinate delay in payment of her salaries. We therefore make the following recommendation:

The General Manager, Entertainment Society of Goa, Panaji-Goa shall pay compensation of Rs.10,000/- (Rupees ten thousand only) to the Complainant, Smt. Aruna Phadte within a period of 30 days. The Respondent No. 1 shall be at liberty to recover the said amount from the erring Officials after fixing the responsibilities.

Date: 09-02-2017.

Place: Panaji-Goa.

A.D. Salkar
Chairperson
Goa Human
Rights
Commission.

J. A. Keny
Member
Goa Human
Rights
Commission.

ENTERTAINMENT SOCIETY OF GOA

Maquinez Palace, Old GMC Precinct, Campal, Panaji-Goa.

Ph: 0832 2428111, Fax: 0832 2428000

ESG/PR/2021/Legal/ArunaPhadte/4184

Date: - 5-4-2021

To.
The Section Officer,
Goa-Human Rights Commission
Old Directorate of Education Bldg.
First Floor, 18th June Road,
Panaji Goa.

Subject: - Compliance Report of Proceeding No. 41/2015.

Sir.

Please find enclosed Compliance Report along with the copy of the letter
and Cheque issued to the Complainant.

Kindly do the needful.

Thanking you.


Mrunal Niket Walke
(General Manager, ESG)

File
UWane
28/04/2021

BEFORE THE GOA HUMAN RIGHTS COMMISSION
AT PANAJI - GOA

Proceeding No. 41/2015

Ms. ArunaPhadte

....Complainant

V/s

The General Manager
Entertainment Society of Goa & Anr.

....Respondents

REPORTMAY IT PLEASE THE HON'BLE COMMISSION:

Cheque no. 002202 dated 24/03/2021 for Rs. 10,000/- is issued to
Complainant, in satisfaction of the recommendation in Inquiry Report dated
09/02/2017 of the Hon'ble Commission (copy of letter no.
ESG/PR/2021/Legal/ArunaPhadte/4167 dated 30/03/2021 attached).

The above submission is to be taken on record by the Hon'ble Commission and the proceeding be closed.

Panaji-Goa
05/04/2021

For Entertainment Society of Goa


General Manager

ENTERTAINMENT SOCIETY OF GOA

Maquinez Palace, Old GMC Precinct, Campal, Panaji-Goa.

Ph: 0832 2428111, Fax: 0832 2428000

ESG/PR/2021/Legal/ArunaPhadte/ 4/67

Date:- 30/03/2021

To,
Aruna Phadte,
H.No. 951/1A (S),
"Royal Homes",
Ward No. IX,
Kranti Nagar, Porvorim,
Bardez-Goa, 403521.

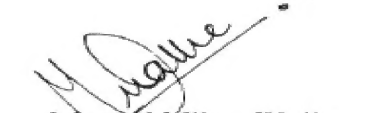
Subject: - Goa Human Right Commission Proceeding No. 41/2015.

Madam,

We are enclosing herewith Cheque No. 002202 dtd. 24/03/2021 for Rs. 10,000/- on recommendation of the Goa Human Right Commission in regards to the above mentioned matter.

Kindly acknowledge the receipt of the same.

Thanking you,


Mrunal Niket Walke
(General Manager, ESG)

Encl: - as above

Copy to:

- 1) Concerned File
- 2) O/C file
- 3) Guard File

Proceeding No. 196/2015

Inquiry Report

We have heard the Complainant in person and Learned Advocate A. Rodrigues for the Respondent No. 1 and 2. We have also perused the records of this case.

2. The only grievance of the Complainant is that he was not been paid his salary for the months from July to September, 2015 without any justification. Admittedly, the salary of the Complainant from July to September was not paid in time. Records indicate that the salary was paid on 21-10-2015. The question for determination by this Commission is whether the Respondent No.1 and 2 were justified for non-payment of salary of the Complainant in time.

3. The Respondent No. 1 and 2 in their reply have stated that the salary and LPC of the Complainant was held in abeyance to expedite the pending matters. The records indicate that the Respondent No. 2 had issued Office Memo bearing No. ESG/15-16/Sal. of Ex-CEO/901 dated 04-09-2015. By the said Office Memo the Complainant was informed that his salary for the period from 01-07-2015 to 17-08-2015 has been kept on hold due to some administrative reasons. By the said Office Memo the Complainant was called upon to meet the Respondent No. 2 with prior appointment by 10th September, 2015 on threats of not releasing the salary and LPC in case the Complainant does not appear before the Respondent No. 2 to settle the issues. From the tenor of the said Office Memo it is apparent that the Respondent No. 2 was adamant in not releasing the salary and LPC of the Complainant on the ground which are totally uncalled for and unwarranted. The reasons set out in the said Office Memo dated 04-09-2015 cannot be a justification to keep the salary of the Complainant in abeyance. The said Office Memo smacks malafides and as such withholding the salary of the Complainant for the period of 3 months is totally illegal and unjustified. The stand taken by the Respondent No.1 and 2 for withholding the salary of the Complainant is not acceptable to us. In case the Complainant had committed administrative lapses, it was open to the Respondents No. 1 and 2 to initiate appropriate disciplinary action against the Complainant. But then, it was not certainly open to the Respondent

No.1 and 2 to stop the monthly salary of the Complainant on the grounds specified in the said Office Memo dated 04-09-2015. The action of the Respondent No. 2 is arbitrary. Needless to say that non-payment of salary to the Complainant is a clear infringement of Fundamental Rights of the employees. Article-21 of the Constitution of India guarantees Right to Life which includes right to live with human dignity and decency.

In the Case of **Kapila Hingorani V/s State of Bihar** reported in AIR 2005 S.C 980 Supreme Court has held **"Where employees of Public Sector undertaking were not paid salaries for years and starving and State bound to protect human rights and fundamental rights directed to deposit sum of Rupees 125.50 crores for payment of arrears of salaries"**.

In the case of **Prof. Devendra Mishra V/s University of Delhi & Ors. the Delhi Hight Court in W. P. (C.) No. 5075/2207** delivered on 16-02-2010 has observed as follows:

"A salaries person by and large depends upon income from salary for his sustenance of his family and if he is not paid salary despite working for a long period, it will affect his life and liberty? This, in the opinion of this Court amount to denial of basic human rights of a citizen and would also amount to deprivation of his life and liberty guaranteed to every citizen under Article 21 of the Constitution of India".

4. In view of the above discussions, we are satisfied that non-payment of salary in time to the Complainant has grossly violated human rights of the Complainant.

the Commission therefore makes the following recommendation:

The Respondent No. 1 and 2 shall pay a sum of Rs. 5,000/- (Rupees five thousand only) as compensation to the Complainant. The compensation shall be paid within a paid of one month from the date of receipt of the recommendation by the Repondent No. 1 and 2.

Date: 11-08-2016.

Place: Panaji-Goa.

A. D. Salkar
Chairperson,
Goa Human
Rights
Commission.

J. A. Keny
Member,
Goa Human
Rights
Commission.

ENTERTAINMENT SOCIETY OF GOA

Maquinez Palace, Old GMC Precinct, Campal, Panaji-Goa.

Ph: 0832 2428111, Fax: 0832 2428000

ESG/PR/2021/Legal/RajanSatardekar/ 4185

Date: - 5-4-2021

To,
The Section Officer,
Goa Human Rights Commission
Old Directorate of Education Bldg,
First Floor, 18th June Road,
Panaji Goa.

Subject: - Compliance Report of Proceeding No. 196/2015

Sir,

Please find enclosed Compliance Report along with the copy of the letter
and Cheque issued to the Complainant.

Kindly do the needful.

Thanking you,


Mukund Niket Walke
(General Manager, ESG)

BEFORE THE GOA HUMAN RIGHTS COMMISSION
AT PANAJI - GOA

Proceeding No. 196/2015

Mr. RajanSatardekar

....Complainant

V/s

The Chief Executive Officer, Entertainment
Society of Goa &Ors.

....Respondents

REPORTMAY IT PLEASE THE HON'BLE COMMISSION:

Cheque no. 002203 dated 24/03/2021 for Rs. 5,000/- is issued to
Complainant, in satisfaction of the recommendation in Inquiry Report dated
11/08/2016 of the Hon'ble Commission (copy of letter no.
ESG/PR/2021/Legal/RajanSatardekar/4168 dated 30/03/2021 attached).

The above submission is to be taken on record by the Hon'ble
Commission and the proceeding be closed.

Panaji-Goa
05/04/2021

For Entertainment Society of Goa


General Manager

ENTERTAINMENT SOCIETY OF GOA

Maquinez Palace, Old GMC Precinct, Campal, Panaji-Goa.

Ph: 0832 2428111, Fax: 0832 2428000

ESG/PR/2021/Legal/RajanSatardekar/ 4168

Date:- 30/03/2021

To,
Rajan Satardekar,
Flat no 402
B-wing, Risara Luxury,
Amralwado, Taleigao,
Goa.

Subject: - Goa Human Right Commission Proceeding No. 196/2015.

Sir,

We are enclosing herewith Cheque No. 002203 dtd. 24/03/2021 for Rs. 5,000/- on recommendation of the Goa Human Right Commission in regards to the above mentioned matter.

Kindly acknowledge the receipt of the same.

Thanking you,


Mrunal Niket Walke
(General Manager, ESG)

Encl: - as above

Copy to:

- 1) Concerned File
- 2) O/C file
- 3) Guard File

Proceeding No. 195/2018

Shri Agnelo A. Fernandes,
Sr. Accountant,
Goa Football Development Council,
Dr. Shyama Prasad Mukherjee Stadium,
Sports Authority of Goa Complex,
Taleigao-Goa Complainant.
V/s

The Member Secretary,
Goa Football Development Council,
Dr. Shyama Prasad Mukherjee Stadium,
Sports Authority of Goa Complex,
Taleigao-Goa Respondent.

Inquiry Report

The Complaint dated 19-09-2018 was received in this Commission on the same day from the Complainant, stating that there have been human

rights violation, alleging that his pay and allowances have not been paid for seven months.

2. The Complainant has stated that he is a retired Assistant Accounts Officer of the Government of Goa and was re-employed as Sr. Accountant in February, 2016 in the Goa Football Development Council which was housed at the Myles High Hotel & Towers Pvt. Ltd., Patto Plaza, Panaji-Goa.

3. It is the case of the Complainant that in the year 2017, Government accorded sanction to shift the Goa Football Development Council office from the then existing premises to Government premises at Dr. Shyama Prasad Mukherjee Stadium, Sports Authority of Goa Complex, Taleigao-Goa and the entire responsibility of shifting the premises including restoration of the old premises and setting the new office was entrusted to the Sports Authority of Goa.

4. It is the case of the Complainant that the Chairman of Goa Football Development Council in consultation with the Chief Engineer, Sports Authority of Goa in turn authorized the Complainant to hold on the keys of the old premises till the restoration work and its handing over to the owner of the premises and he was directed to be present at regular intervals and oversee the restoration work and to see that no damage is caused to the existing interiors and flooring.

5. It is the case of the Complainant that in March, 2018, he was surprised to note that his salary was not credited to his bank account and withheld by the Member Secretary of GFDC for want of his written explanation which had been already furnished. He stated that till he filed the complaint before this Commission, his monthly pay and allowances were not released by the Respondent for the last seven months and his fundamental rights have been violated.

6. The Commission perused the complaint and by Order dated 21-09-2018, called for the report from the Member Secretary, Goa Football Development Council.

7. The Respondent filed their report dated 19-10-2018, before the Commission. The Respondent states that the responsibility of shifting the premises by dismantling the existing office fixtures and restoration of premises after shifting was assigned to the Sports Authority of Goa (SAG) and was their sole responsibility. They stated that without the knowledge, permission or direction from the Member Secretary, the Complainant got himself involved in the work of shifting and took over the possession of the vacated premises at Myles High Corporate Hub. The Respondent stated that time and again, the Complainant was directed to handover the premises of Myles High either to the owner or to the Chief Engineer of SAG and in spite of repeated instructions, he retained the possession of the vacant premises for a prolonged period of time from 17th September, 2017 to May, 2018. The Respondent also stated that on 16-03-2018, the Complainant was issued a Memorandum where the Complainant was directed to handover the vacated premises and its keys to the owner of Myles High Corporate Hub immediately and obtain "No Dues" certificate from the owner. In his reply dated 21-03-2018, the Complainant had stated to the Respondent that the owner of Myles High Corporate Hub refused to take possession of the keys until and unless missing items were replaced.

8. It is case of the Respondent that due to the misbehavior and act of indiscipline on the part of the

Complainant, which could cause financial loss to the Council, it was decided to withhold part of the monthly salary of the Complainant, in case the Council decided to recover the loss from the Complainant.

9. The Respondent states on account of the serious lapse on the part of the Complainant, the Council had to incur expenditure on restoration and replacement of missing items from the vacated premises and finally the Council amicably settled the entire issue of retained vacant premises with the owner of Myles High in the month of May, 2018, on 11-05-2018. The Respondent stated that after resolution of all issues, the withheld component of monthly remuneration of the Complainant has been released without any deductions. The Respondent attached some documents to the Report.

10. The Complainant in turn filed his Rejoinder dated 12-11-2018, stating that the keys of the vacated premises were to be handled by the Complainant as per the verbal instructions of the Hon'ble Chairman which were confirmed by written remarks in two files. He stated that the question of disobeying the orders of the Member Secretary did not arise, as the instructions were issued by the Hon'ble Chairman who is the Supreme Authority of the Council as per the Constitution of the Council. The Complainant also stated that there was no question of recovery of the losses from his pay and allowances as the vacated premises were officially and physically handed over on 12-05-2018 and his salary was withheld till 30th September, 2018 and was released only after serving a Show Cause Notice by this Commission and this implies an ulterior motive and an act of harassment by the Respondent. He prayed that he may be paid compensation along with interest for eight months as deemed fit by the Commission. He also attached some documents to his Rejoinder.

11. Written arguments have been filed by the Complainant and the Respondent. The Commission also heard the Complainant and Adv. Ms. Harsha Naik for the Respondent.

12. From the complaint, the report/reply, the Rejoinder, the documents of both sides, the written arguments and oral submissions, it is clear that the Complainant was a retired Government Officer, who had been re-employed on contract basis with the Goa Football Development Council from 2016 till 30-10-2018.

13. On the one hand, it is the case of the Complainant that he was not paid his monthly remuneration for a period of seven months from

February, 2018 to August, 2018. In response, the Respondent has stated that there was indiscipline on the part of the Complainant in holding the keys and without any authority of the Member Secretary. But from the documents produced by the Complainant, which were annexed to his written arguments, it is seen that on 11-05-2018, the Member Secretary had himself endorsed that the matter has been handled by Chairman, Chief Engineer, SAG and Shri Agnelo, Sr. Accountant from GFDC and the Member Secretary is not privy to any discussion or decision taken in the matter. This was in response to the Note put up by the Complainant as Sr. Accountant that the restoration work has been done and handing over of the premises as mutually agreed, by the Hon'ble Chairman, Chief Engineer, SAG and Managing Director, Myles High, to pay the rent with all taxes upto October, 2017 and it was mutually agreed to handover the keys.

14. The records indicate that there was no indiscipline and misconduct by the Complainant as he was entrusted the responsibility of handling the shifting of office. This is seen from the documents obtained by the Complainant from the Goa Football Development Council under the RTI Act, where there is a "Note", that the Complainant was authorized to take charge of shifting the office from Myles High to Shyama Prasad Mukerjee Stadium and was entrusted with the keys and the joint inspection with SE Chimulkar to handover the premises to Myles High. This supports the stand of the Complainant that he was authorized to hold charge of the keys. As such, the Commission finds no merits in the submissions on behalf of the Respondent that the Complainant held on the keys and disobeyed the orders of the Member Secretary. Even otherwise, the matter was amicably settled with the owner on 11-05-2018.

15. The Complainant having been employed on contract basis was being paid the monthly contractual amount of Rs. 39,116/-. There is no dispute that he was not paid his contractual amount from February, 2018, as the Member Secretary had withheld the same. As the matter was settled by the owner on 11-05-2018, at least soon after that his monthly salary ought to have been released but was only released by NEFT payment, on 06th October, 2018. It can be seen from the extract of bank passbook of the Complainant that he was paid his arrears from February, 2018 to August, 2018 including his September amount, which amounts to Rs. 2,92,928/-.

16. The Member Secretary has made out no grounds for delay of payments of the contractual

amount that was due to the Complainant from February, 2018 till August, 2018. Under Section 18 (a) (i) of the Protection of Human Rights Act, 1993, the Commission can make recommendations to make payment of compensation or damages to the Complainant or to the victim or members of his family as the Commission may consider necessary.

17. In the present case, soon after filing the complaint in this Commission on 19-09-2018, the Goa Football Development Council eventually paid the Complainant his dues by NEFT on 06-10-2018, amounting to Rs. 2,92,928/-. For the mental harassment caused to the retired Government servant by unduly harassing him by withholding his dues, the Commission finds that he is entitled for a reasonable compensation.

18. Taking interest at the rate of 10% per annum on Rs. 2,92,928/-, the compensation works out to around Rs. 29,000/-. As the Commission has concluded that the Complainant was subjected to mental harassment and was deprived of his human rights by the Member Secretary, the Commission recommends that the Member Secretary of the Goa Football Development Council pay to the Complainant compensation of Rs. 29,000/- (Rupees twenty nine thousand only) and recover the same from the then Member Secretary, GFDC, Shri Aleixo F. da Costa.

19. Under Regulation 17 of the Goa Human Rights Commission (Procedure) Regulations, 2011, a copy of the report and the recommendation shall be sent to the Member Secretary, GFDC, calling upon it to furnish its comments on the report including action taken or proposed to be taken, within a period of one month from the date of receipt of the Report and recommendations.

Date: 10-12-2020.

Place: Panaji-Goa.

Justice U. V. Bakre Desmond D'Costa Pramod V. Kamat

Chairperson	Member	Member
Goa Human	Goa Human	Goa Human
Rights	Rights	Rights
Commission.	Commission.	Commission.

09/08/2021 GHRC Inward No. 232 Date: 06.08.2021

GOA@GU

Reg. No. 195/GOA/2012

GOA FOOTBALL DEVELOPMENT COUNCIL
(A Govt. Of Goa Undertaking)
Address: Ground Floor, Athletic Stadium, Cujira, Bambolim- Goa - 403202
Email: contact@gfdc.in Website: www.gfdc.in

Ref No. GFDC/35/03/2018/207

Date : 05/08/2021

To,
The Section Officer,
The Office of the Goa Human Rights Commission,
Old Education Department Building,
1st Floor, 18th June Road,
Panaji Goa 403001,

Put up the file
V.B. Bane
09/08/2021

Sub: Inquiry Report in Proceeding No. 195/2018

Ref:- 1. This office letter No. 6/22/2012/GHRC/RTI/1186 dated 18/12/2020.

2. Proceeding No. 195/2018/406 dt. 07/07/2021

On
9/8/2021
V.B. Bane
9/8/21

Sir,

This office is in receipt of letter dt 07/07/2021 to submit comments including Action Taken Report or proposed to be taken on the above Inquiry Report.

In this regard it is informed that this office received an Inquiry Report dt 10/12/2020 passed by Hon'ble Goa Human Rights Commission, Panaji in Proceeding No. 195/2018 by letter no. 6/22/2012/GHRC/RTI/1186 dt. 18/12/2020. On receiving the above letter and Inquiry Report this office vide letter No. GFDC/35/03/2018/332 dt. 11/01/2021 informed that Shri Aleixo F. da Costa was holding additional charge of Goa Football Development Council, Bambolim and his parent department was Directorate of Skill Development & Entrepreneurship, Panaji. Shri Aleixo F. da Costa draws salary from his parent department and therefore GFDC is not in position to recover Rs. 29,000/- against the order (copy of the same is enclosed herewith).

Presently Shri Aleixo F. da Costa is not officiating as Member Secretary of GFDC as the Undersigned has been posted as Member Secretary, GFDC vide order no. 6/13/2017-PER)344 dt 03/02/2021 (copy enclosed).

File
V.B. Bane
28/08/2022

It is also informed that as per the records available in the office Shri Costa vide order file no. 7/2/2020-PER/1305 dt. 05/06/2020 has been posted as Director at Non conventional and Renewable Energy Sources (copy enclosed) and vide virtue of Addendum no. file no. 4/5/2005-PER (Vol II)/2978 dt. 16/11/2018 is drawing his salary from Directorate of Skill Development & Entrepreneurship, Panaji. (copy enclosed) and presently working as the Director, at Non conventional and Renewable Energy Sources, Panaji.

In view of above, it is informed that this office is unable to recover Rs. 29,000/- as per the direction issued in the Inquiry Report dt. 10/12/2020 from Shri Shri Aleixo F. da Costa.

Submitted for information and necessary directions.



Shri. Brijesh Manerkar
Member Secretary

Copy Enclosed:



Department of Labour

Notification

No. 28/2/2022-LAB/121

The following Award passed by the Labour Court II, at Panaji-Goa on 16-02-2022 in Case No. LC-II/LCC/04/2020 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).

Porvorim, 8th March, 2022

THE LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)

Case No. LC-II/LCC/04/2020.

Shri Shardul Sawardekar,
R/o. Porvorim-Goa Applicant.
V/s

M/s. Marmagao Steel Limited,
Curtorim, Salcete-Goa Opponent.

Applicant present in person.

Opponent absent, marked as Ex-parte.

Panaji, Dated: 16-02-2022.

JUDGMENT

1. This judgment shall determine the claim application of the Applicant dated 08-05-2020 filed u/s 33-C (2) of the I.D. Act, 1947.

2. By the present claim application, the Applicant claimed an amount of Rs.1,94,491/- (Rupees One lakh ninety four thousand four hundred and ninety one only) towards gratuity, encashment on leave, medical benefit and leave travel allowance for the year 2011-2013.

3. A notice issued to the Opponent by registered post A/D, has been duly served. The Opponent has however, remained absent on the scheduled dates of hearings. This court after giving ample opportunities to the Opponent, marked an ex-parte order against them and an ex-parte proceedings were conducted.

4. This court framed the following issues on 22-09-2021 at Exb. 3. The said issues have been updated vide order dated 21-12-2021 at Exb. 5.

1. Whether the Applicant proves that he is entitled to receive from the Opponent a sum of Rs. 1,94,491/- (Rupees One lakh ninety four thousand four hundred ninety one only) towards gratuity, encashment of leave, medical benefit, LTA etc.?

2. What order?

5. My answers to the aforesaid issues are as under:

(a) Issue No. 1: In the affirmative.

(b) Issue No. 2: As per final order.

REASONS:

I have heard the Applicant in person. On the contrary, none remained present for the Opponent. I have carefully perused the entire records of the present case. I have also carefully considered the submissions advanced before me and is of the opinion as under:

Issue No. 1:

6. The Applicant claimed an amount of Rs. 60,106/- towards his gratuity, Rs. 62,523/- towards his leave encashment, Rs. 37,340/- towards his medical benefit as per agreement for the year 2011-2013 and Rs. 34,522/- towards his leave travel allowance for the year 2011-2013 for total amount of Rs. 1,94,491/-.

7. To prove his case, the Applicant examined himself and produced on record certain documentary evidence in support of his oral evidence. The said evidence adduced by the Applicant remained unchallenged for want of denial.

The Applicant has produced on record his full and final settlement issued by the Opponent (Exb.11) in support of his oral evidence. The said full and final settlement of the Applicant on record indicates that the gross salary of the Applicant was Rs. 20,841/-. The said documents on record indicates that the Applicant is entitled for PL Encashment of 90 days amounting to Rs. 62,523/-, Gratuity for six years amounting to Rs. 60,106/-, LTA (from 01-04-2011 to 28-03-2013) amounting to Rs. 34,522/- and medical benefits of Rs. 37,340/- total amounting to Rs. 1,94,491/- (Rupees One lakh ninety four thousand four hundred and ninety one only). The said document at Exb.11 on record clearly indicates that the Opponent is liable to pay to the Applicant an amount of Rs.1,94,491/- as stated hereinabove. However, there is nothing on record to show that the Applicant has been paid the said amount of Rs.1,94,491/-. Hence, it is held that the Applicant proved that he is entitled to receive from the Opponent a sum of Rs.1,94,491/- (Rupees One lakh ninety four thousand four hundred and ninety one only). The issue No.1 is therefore answered in the affirmative.

In view of above, I pass the following order:

ORDER

The claim application of the Applicant dated 08-05-2020 is hereby allowed. Consequently, the Opponent, M/s. Marmagao Steel Ltd., is hereby directed to pay to the Applicant, Shri Shardul Sawardekar an amount of Rs.1,94,491/- (Rupees One lakh ninety four thousand four hundred and ninety one only) within a period of two months from the

date of passing the present order, failing which it shall bear a simple interest @ 9% p.a.

No order as to costs.

Pronounced in the open court.

Suresh N. Narulkar,
Presiding Officer,
Labour Court – II.

Notification

No. 28/2/2022-LAB/Part-I/122

The following Award passed by the Labour Court-II, at Panaji-Goa on 21-01-2022 in case No. Ref. LC-II/IT/07/2019 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).
Porvorim, 8th March, 2022.

IN THE LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

(Before **Shri Suresh N. Narulkar, Hon'ble**
Presiding Officer)

Case No. Ref. LC-II/IT/07/2019

Shri Ravindra C. Sinkar,
H. No. 38, Chimbhel,
Tiswadi-Goa Workman/Party I.
V/s

M/s. Kadamba Transport Corporation Ltd.,
Paraise de Goa,
Alto Porvorim-Goa ... Employer/Party II.

Workman/Party I represented by Ld. Rep. Shri Subhash Naik George.

Employer/Party II represented by Ld. Adv., Shri P. Agarwal.

Panaji, Dated: 21-01-2022.

AWARD

1. In Exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act, 14 of 1947) the Government of Goa, by Order dated 28-11-2018, bearing No. 28/29/2018-LAB/759, referred the following dispute for adjudication to this Labour Court II, Panaji-Goa.

“(1) Whether the demand of the Workman, Shri Ravindra C. Sinkar, Ex-Conductor, for wages for the period from 07-02-2012 to 14-08-2013 from M/s. Kadamba Transport Corporation Limited, Porvorim, for the period he was dismissed from services, is legal and justified?”

“(2) If not, what relief, the Workman is entitled to?”

2. On receipt of the reference, a case was registered under No. LC-II/IT/07/2019 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party-I (for short “Workman”), filed his Statement of Claim on 27-03-2019 at Exb. 4. The facts of the case in brief as pleaded by the Workman are that the Employer/Party II (for short “Employer”) is a Government of Goa transport undertaking, which provides bus transport all over Goa. He stated that the Employer is a public sector undertaking. He stated that he was employed with the Employer as a ‘conductor’ for over 28 years and retired in May, 2016.

3. He stated that while in the employment of the Employer, he was dismissed from service, vide letter dated 07-02-2012 on false charges. He stated that he therefore made an appeal before the First Appellate Authority against the said dismissal order of the Disciplinary Authority. He stated that the First Appellate Authority upheld the order of dismissal. He stated that he therefore made an appeal before the Second Appellate Authority. He stated that the Second Appellate Authority, vide its order dated 07-05-2013, quashed the said dismissal order and reinstated him with continuity in service, but did not give back wages for the period from 07-02-2012 to 14-08-2013 and enquiry was continued for the alleged misconduct. He stated that after the enquiry, punishment was passed in respect of the said enquiry into the charge-sheet dated 01-09-2010. He stated that vide order dated 19-04-2016, he was punished with a fine of Rs. 2000/- however, wages for the period from 07-02-2012 till 14-08-2013 has not been paid till date. He submitted that the same has to be paid as two punishments cannot be imposed for one misconduct. Aggrieved by the decision of the Employer in non-granting wages for the period from 07-02-2012 till 14-08-2013, he addressed several letters to the Employer. He stated that he raised a dispute before the Conciliation Officer demanding wages for the said period, which ended in failure.

4. The Workman contended that as per standing orders, the procedure for taking action against staff for misconduct is laid down. He submitted that the principle is as per principles of natural justice. He submitted that the action of the management in dismissing him without enquiry was illegal and

rightfully, the Employer set it aside in appeal and ordered the enquiry to be continued. He submitted that however, while allowing reinstatement, the Employer wrongly did not paid wages for the period from 07-02-2012 till 14-08-2013. He submitted that the action of the Employer in not paying wages for the period from 07-02-2012 till 14-08-2013 is illegal and unjustified and the same should be paid alongwith interest and costs. He submitted that he is entitled for the wages for the period from 07-02-2012 till 14-08-2013 as he has already been punished by imposing a fine of Rs. 2000/- for the misconduct in respect of the charge-sheet issued to him and he cannot be punished twice in respect of the same charge-sheet. The Workman therefore, prayed that he may be paid wages for the period from 07-02-2012 till 14-08-2013.

5. The Employer resisted the claim of the Workman by filing its written statement dated 22-07-2019 at Exb. 6. The Employer, as and by way of its preliminary objections, submitted that the reference is not maintainable for the reasons that there is no ‘industrial dispute’ exists between the parties as defined u/s 2 (k) of the I.D. Act, 1947 and that the reference is bad-in-law as it is hit by delay and laches and that the same has been made by the Government of Goa without any material on record, in haste and without application of mind and that this Labour Court II has no jurisdiction to adjudicate and decide the schedule of reference under the I. D. Act, 1947.

6. The Employer stated that it is a Government Company registered under Section 617 of the Companies Act, 1956. The Employer stated that it is a State Transport Undertaking under the purview of the M.T. Act, 1988. The Employer admitted that the Workman was working with them as a ‘conductor’. The Employer stated that the Workman, ex-conductor was issued a charge-sheet dated 01-09-2010 and enquiry was conducted pertaining to the said charge-sheet. The Employer stated that the Id. Enquiry Officer submitted the reports of the enquiry holding charge No.1 was proved and charge No. 2 was partly proved against the Workman. The Employer stated that a show-cause was issued to the Workman informing him of the above position, vide its letter dated 02-01-2012. The Employer stated that the Workman was asked to show-cause as to why penalty of dismissal from the services should not be imposed on him. The Employer stated that the past record of the Workman were also perused before the dismissal and it was found that in the past, the Workman was punished for the misconduct for misappropriation of its legitimate revenue, though

various punishments, such as warnings, fines, suspension without pay. The Employer stated that after scrutinizing the written explanation to the show-cause notice as well as the past records of the Workman, the Disciplinary Authority, vide its order dated 07-02-2012, awarded him with the punishment of dismissal from service.

7. The Employer stated that the Workman preferred an appeal before the First Appellate Authority i.e. the Managing Director against the order of the Disciplinary Authority. The Employer stated that since the First Appellate Authority withheld the punishment imposed by the Disciplinary Authority, the Workman preferred a Second Appeal before the Second Appellate Authority i.e. the Chairman. The Employer stated that in the Second Appeal, the Workman prayed for setting aside the order of the Disciplinary Authority as well as the First Appellate Authority and reinstate back in service with full back wages and continuity in service. The Employer stated that vide its order dated 22-03-2013, the Second Appellate Authority set aside the order of the Disciplinary Authority and reinstated the Workman in service without back wages, but with continuity in service. The Second Appellate Authority further remanded the enquiry before the Enquiry Officer and the Workman was permitted to lead evidence before the Id. Enquiry Officer. The Employer stated that the Second Appellate Authority also observed in its order that since the Appellant/Workman has prayed that he is the only bread earner in the family, his case was considered sympathetically and he was reinstated in services of the Corporation without back wages.

8. The Employer stated that the said order of the Second Appellate Authority dated 22-03-2013 i.e. reinstatement without back wages was not challenged and disputed by the Workman. The Employer stated that accordingly, the Workman reported for his duty, vide his letter dated 24-08-2013 and continued working till his retirement. The Employer stated that vide order dated 22-03-2013, the enquiry was remanded back to the Id. Enquiry Officer, permitting the Workman to lead evidence before him. The Employer stated that after giving several opportunities to the Workman to lead evidence, the Id. Enquiry Officer submitted his enquiry report dated 13-08-2015. The Employer stated that a show-cause notice was issued to the Workman. The Employer stated that on finding his explanation, the Workman was issued an order dated 19-04-2016 imposing penalty of Rs. 2000/- to be recovered from his wages/final settlement. The Employer stated that the Workman continued

working with the Employer till his date of retirement on 31-05-2016.

9. The Employer stated that the Workman did not dispute/challenge the order of the Second Appellate Authority dated 22-03-2013 as well as the Disciplinary Authority order dated 19-04-2016 imposing penalty of Rs. 2000/-. The Employer stated that both the said orders has attended its finality. The Employer stated that a final settlement of gratuity etc. of the Workman was made, vide letter dated 02-08-2016. The Employer stated that the Workman, vide its letter dated 10-04-2017, raised a dispute before the Asstt. Labour Commissioner, Mapusa-Goa for non-payment of legal dues for the period from 07-02-2012 to 14-08-2013 along with the final settlement after retirement from its services. The Employer submitted that the claim of the Workman pertaining to non-payment of wages for the period from 07-02-2012 to 14-08-2013 is not tenable as the Workman was reinstated without back wages. The Employer denied overall case as pleaded by the Workman and prayed for rejection of the present reference.

10. Thereafter, the Workman filed his re-joinder on 20-08-2019 at Exb. 7. The Workman, by way of his re-joinder, confirms and reiterates all the submissions and averments made by him in his claim statement to be true and correct and denies all the statements and averments made by the Employer in the Written Statement, which are contrary to the statements and averments made by him.

11. Based on the pleadings filed by the parties hereinabove, this Hon'ble Court was pleased to frame following issues on 28-08-2019 at Exb. 8.

1. Whether the Workman/Party I proves that he is entitled to receive from the Employer his wages for the period from 07-02-2012 to 14-08-2013?
2. Whether the Workman/Party I proves that the action of the Employer in non-payment of his wages for the period from 07-02-2012 to 14-08-2013 for the period he was dismissed from the service, is illegal and unjustified?
3. Whether the Employer/Party II proves that the present reference is not maintainable in view of the reasons stated in para 2 (a) (b) (c) and (d) of the written statement?
4. Whether the Workman/Party I is entitled to any relief?
5. What Order? What Award?

12. My answers to the aforesaid issues are as under:

- (a) Issue No. 1 : In the Negative.

- (b) Issue No. 2 : In the Negative.
 (c) Issue No. 3 : In the Negative.
 (d) Issue No. 4 and 5 : As per final order.

I have heard the oral arguments of Ld. Rep. Shri Subhash Naik George appearing for the Workman as well as Ld. Adv. Shri P. Agarwal appearing for the Employer.

13. Ld. Rep. Shri Subhash Naik George, appearing for the Workman during the course of his oral arguments submitted that the Workman was appointed as a 'conductor' by the Employer. He submitted that the Workman was issued a charge-sheet dated 01-09-2010 and conducted an enquiry. He submitted that the Id. Enquiry Officer submitted his findings holding him guilty of the charge No. 1 and charge No. 2 was partly proved against the Workman. He submitted that a show-cause notice was issued to the Workman, vide show-cause notice dated 02-01-2012 and the Workman was asked to show cause as to why the penalty of dismissal from service should not be imposed upon him. He submitted that the Workman was dismissed from service, vide order of the Employer dated 07-02-2012 on false charges. He submitted that the Workman therefore preferred an appeal before the First Appellate Authority against the order of dismissal from service. He submitted that the First Appellate Authority upheld the order of dismissal of the Workman. He submitted that the Workman therefore preferred an appeal before the Second Appellate Authority i.e. the chairman. He submitted that the Second Appellate Authority, vide its order dated 07-05-2013 quashed the said dismissal order of the Workman and reinstated him in service with continuity in service, but did not give back wages for the period from 07-02-2012 till 14-08-2013. He submitted that the Second Appellate Authority also ordered to remand the enquiry before the Id. Enquiry Officer. He submitted that Id. Enquiry Officer conducted the enquiry against the Workman and submitted its findings. He submitted that thereafter, the Employer punished the Workman by imposing a penalty of fine of Rs. 2000/- vide its order dated 19-04-2016. He submitted that the Employer cannot punish twice for one and the same misconduct. He submitted that the Employer is having its own certified standing orders. He submitted that as per the Certified Standing Orders applicable to the Workman, there cannot be two punishments for a single misconduct. He submitted that the action of the Employer in non-payment of back wages is illegal and unjustified. He therefore prayed that the Workman is therefore entitled for wages for the period from 07-02-2012 till 14-08-2013.

14. Per contra, Ld. Adv. Shri P. Agarwal, representing the Employer, during the course of his oral arguments, submitted that the Workman was employed by the conductor and also retired from the services of the Employer in May, 2016. He submitted that the Workman was issued charge-sheet dated 01-09-2010 and conducted an enquiry. He submitted that Id. Enquiry Officer submitted his findings holding him guilty of the charge No.1 and charge No. 2 was partly proved against the Workman. He submitted that the Workman was issued a show-cause notice dated 02-01-2012 and was asked to show cause as to why the penalty of dismissal from the services should not be imposed upon him. He submitted that as the past records of the Workman was blame worthy, the Workman was dismissed from services of the Employer, vide its order dated 07-02-2012. He submitted that the Workman preferred an appeal against the said order of dismissal dated 07-02-2012 before the First Appellate Authority. He submitted that the First Appellate Authority upheld the order of dismissal of the Workman. He submitted that the Workman therefore preferred an appeal before the Second Appellate Authority against the order of the Disciplinary Authority. He submitted that vide its order dated 22-03-2013, the Second Appellate Authority set aside the order of the Disciplinary Authority and reinstated the Workman in service without back wages but with continuity in service. He submitted that by the said order, the Second Appellate Authority further remanded the enquiry to the Id. Enquiry Officer and permitted the Workman to lead evidence before the Id. Enquiry Officer. He submitted that in pursuance to the said order of the Second Appellate Authority, the Workman appeared before the Id. Enquiry Officer. He submitted that the Id. Enquiry Officer conducted the enquiry and submitted his findings dated 13-08-2015. He submitted that thereafter a show-cause notice was issued to the Workman. He submitted that the Workman was imposed a penalty of Rs. 2000/- to be recovered from him wages/final settlement. He submitted that the Workman continued working with the Employer till his date of retirement on 31-05-2016. He submitted that at no point of time, the Workman disputed/challenged the order of the Second Appellate Authority dated 22-03-2013 as well as order of the Disciplinary Authority dated 19-04-2016 imposing penalty of Rs. 2000/-. He submitted that the order of Second Appellate Authority as well as the Disciplinary Authority of imposing fine of Rs. 2000/- attended finality for want of challenge. He submitted that as the Workman did not challenge the order of the Second Appellate

Authority as well as the order of the Disciplinary Authority of penalty of fine of Rs. 2000/-, the Workman cannot ask for the back wages for the period from 07-02-2012 till 14-08-2013. He submitted that the demand of the Workman for back wages for the period from 07-02-2012 till 14-08-2013 is not tenable in the eyes of law and prayed for rejection of the reference.

I have carefully perused the entire records of the present case. I have also carefully considered the various submissions made by Id. Rep. Shri Subhash Naik George, appearing for the Workman as well as Id. Adv. Shri. P. Agarwal, appearing for the Employer.

REASONS:

Issue No. 1 and 2:

I am deciding the issue No.1 and 2, simultaneously as both these issues are co-related to each other.

15. Undisputedly, the Workman was employed by the Employer as a conductor. The Workman was issued a charge-sheet dated 01-09-2010 (Exb. 28) and held enquiry while in the services of the Employer. The Ld. Enquiry Officer submitted his findings holding the Workman guilty of the charge No.1 and charge No.1 was partly proved. A show-cause notice dated 02-01-2010 was issued to the Workman asking him to show cause as to why the penalty of dismissal from the services shall not be imposed upon him. After scrutinizing the explanation submitted by the Workman and his past records, the Workman was dismissed from the services of the Employer, vide its order dated 07-02-2012 (Exb. 27). The Workman preferred an appeal before the First Appellate Authority (Managing Director) against the order of the Disciplinary Authority. The First Appellate Authority upheld the order of the Disciplinary Authority, vide his judgment dated 10-08-2012 (Exb. 30-cross). The Workman preferred an appeal before the Second Appellate Authority (the Chairman) vide his appeal dated 28-10-2012 (Exb. 31-cross). The Second Appellate Authority partly allowed the Second Appeal of the Workman and the punishment of dismissal order dated 22-03-2013 (Exb. 32-cross) passed by the Disciplinary Authority was quashed and set aside and the Workman was reinstated in services of the Employer without any back wages, but however, continuity in service. By the said order, the Second Appellate Authority further remanded back the enquiry to the Id. Enquiry Officer and the Appellant/Workman was permitted to lead evidence before the Id. Enquiry Officer. The Second Appellate Authority, in his order further observed that "since the Appellant prayed that he is the only bread earner in the family, his case was considered sympathetically and he was reinstated in the services

of the Corporation without back wages". In pursuance to the said order of the Second Appellate Authority, the Workman did not raise any dispute nor challenged the same, but joined the services of the Employer, vide his joining letter dated 24-08-2013 (Exb. 33-cross). The Workman continued to remain in the employment of the Employer till his superannuation. The Workman also appeared before the Id. Enquiry Officer. The Id. Enquiry Officer conducted an enquiry against the Workman and submitted his findings. The Disciplinary Authority, vide its order dated 19-04-2016 (Exb. 20), thereafter issued a penalty of fine of Rs. 2000/- to be recovered from the wages of the Workman. The Workman also did not challenge the said order of the Disciplinary Authority of penalty of fine of Rs. 2000/-. Thus, the said order of the Second Appellate Authority as well as the order of the Disciplinary Authority of imposing penalty of fine of Rs. 2000/- attended finality for want of challenge.

16. The Workman was issued his final settlement of dues arising out of superannuation, vide letter of the Employer dated 02-08-2016 (Exb.19). The Workman replied to the aforesaid letter of the Employer, vide his letter dated 06-08-2016 (Exb. 18) stating that he is not satisfied with the calculation of dues of settlement. The Workman, vide his letter dated 11-08-2016 (Exb. 17), requested the Employer that his wages for the period from 07-02-2012 till 14-08-2013 has not been released in the final settlement and that in view of the imposition of fine of Rs. 2000/-, he is entitled for back wages of that aforesaid period. The Employer, vide its letter dated 15-09-2016 (Exb. 29), informed the Workman that since he was reinstated in the services of the Corporation without back wages as per the order of the Second Appellate Authority, his request was not considered. The Workman, vide his letter dated 10-04-2017 (Exb. 14), raised the dispute before the Labour Commissioner, Panaji-Goa, pertaining to non-payment of his legal dues for the period from 07-02-2012 till 14-08-2013 along with his final settlement after retirement of his services from the Employer Corporation.

17. The sole contention of Id. Rep. Shri Subhash Naik George, appearing for the Workman that the Employer is having its own Certified Standing Orders and as per the said CSO, there cannot be two punishments for a single and same misconduct.

Admittedly, there were two punishments imposed on the Workman i.e. reinstatement without back wages as well as penalty of fine of Rs. 2000/-. The Workman did not challenge the order of the Second Appellate Authority, but accepted the said order and joined in the services of the Employer and also

participated in the enquiry. Similarly, there is no pleadings of the Workman that the order of the Second Appellate Authority is illegal and unjustified. In the absence of any pleadings, the Workman cannot claim any back wages. As the Workman did not challenge the order of the Second Appellate Authority as well as the order of the Disciplinary Authority of imposing penalty of fine of Rs. 2000/- to be recovered from the wages/final settlement of the Workman, he is not entitled for back wages for the period from 07-02-2012 to 14-08-2013. Hence, it is held that the Workman failed to prove that the action of the Employer in non-payment of his wages for the period from 07-02-2012 to 14-08-2013 for the period he was dismissed from the service is illegal and unjustified. Consequently, the Workman is not entitled to receive from the Employer his wages for the period from 07-02-2012 to 14-08-2013. The Issue No. 1 and 2 are therefore answered in the Negative.

Issue No. 3:

18. The Employer, as and by way of its preliminary objections submitted that the reference is not maintainable for reasons that there exist no 'industrial dispute' exists between the parties as defined u/s 2 (k) of the I.D. Act, 1947 and that the reference is bad-in-law as it is hit by delay and laches and that the same has been made by the Government of Goa without any material on record, in haste and without application of mind and that this Labour Court II has no jurisdiction to adjudicate and decide the schedule of reference under the I.D. Act, 1947. The burden to prove the said allegations is on the Employer.

The term 'industrial dispute' is defined u/s 2 (k) of the I.D. Act, 1947 and it means "any dispute or difference between Employers and Employers, or between Employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

19. In the case in hand, there is no dispute that the Party I is a 'Workman' as defined u/s 2 (s) of the I.D. Act and the Employer is an 'industry' within the meaning of Section 2 (j) of the I.D. Act, 1947 and the dispute raised by the Workman pertaining to his non-employment is an 'industrial dispute' within the meaning of Section 2 (k) of the I.D. Act, 1947 and as such this Hon'ble Court has every jurisdiction to adjudicate and decide the present reference under the I.D. Act, 1947. The schedule of reference is within the time. Hence, I do not find any merits in the preliminary objections raised by the Employer and

as such it is rejected. It is held that the Employer failed to prove that the reference is not maintainable in view of the reasons stated in para (a), (b) (c) and (d) of the written statement. The Issue No. 3 is therefore answered in the Negative.

Issue No. 4:

20. While deciding the issue No. 2 hereinabove, I have discussed and come to the conclusion that the action of the Employer in non-payment of wages of the Workman for the period from 07-02-2012 till 14-08-2013 for the period he was dismissed from the services is legal and justified. Similarly, while deciding the issue No. 1, I have discussed and come to the conclusion that the Workman is not entitled to receive from the Employer his wages for the period from 07-02-2012 till 14-08-2013. The Workman is therefore not entitled to any relief. The Issue No. 4 is therefore answered in the negative.

In view of above, I proceed to pass the following order.

ORDER

1. It is held that the demand of the Workman, Shri Ravindra C. Sinkar, Ex-Conductor, for wages for the period from 07-02-2012 to 14-08-2013 from M/s. Kadamba Transport Corporation Limited, Porvorim, for the period he was dismissed from services, is illegal and unjustified.

2. The Workman, Shri Ravindra C. Sinkar, Ex-Conductor is not entitled to any relief.

3. No order as to costs.

Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Notification

No. 28/2/2022-LAB/Part-I/123

The following Award passed by the Labour Court II, at Panaji-Goa on 07-02-2022 in Case No. LC-II/IT/110/99 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).
Porvorim, 8th March, 2022.

**THE LABOUR COURT – II
GOVERNMENT OF GOA
AT PANAJI**

(Before **Shri Suresh N. Narulkar, Hon'ble
Presiding Officer**)

Case No. LC-II/IT/110/99

Shri Sameer V. Naik,
H. No.118, Bandir Wada,
Chapora, Bardez-Goa Workman/Party-I.
V/s

M/s. M.R.F Ltd.,
Usgao, Ponda - Goa Employer/Party-II.

Workman/Party-I represented by Ld. Adv. Shri V. Menezes.

Employer/Party-II represented by Ld. Adv. Shri G.K. Sardessai.

Panaji, Dated: 07-02-2022.

A W A R D

1. In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by Order dated 27-09-1999, bearing No. IRM/CON/P/262/99/4888 referred the following dispute for adjudication to the Industrial Tribunal of Goa at Panaji-Goa. The Government of Goa, vide it's another order dated 09-02-2016 transferred the present dispute to the Labour Court II, Panaji-Goa.

1. "Whether the action of the management of M/s. MRF Limited, Usgao, Ponda-Goa, in terminating the services of Shri Sameer V. Naik, with effect from 31-08-1998, is legal and justified?"

2. If not, to what relief the Workman is entitled to?"

2. On receipt of the reference, a case was registered under No. IT/110/99 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short, 'Workman'), filed his Statement of Claim on 20-01-2000 at Exb- 4. The facts of the case as pleaded by the Workman are that the Employer/Party-II (for short, 'Employer') is engaged in the manufacture of tyres. He stated that the Employer is one of the most reputed concerns in the manufacture of tyres and is well established in its line of business. He stated that he joined in the services of the Employer on 18-06-1993 as a 'Trainee Workman'. He stated that the Employer, under the guise of calling the Workman a trainee, issued various

letters starting from 19-12-1993, then 04-04-1994 till the date of appointment as a 'probationer' w.e.f. 01-04-1995. He stated that in the said letter, the Employer purportedly, each time offered him extension of the training period till the date of his appointment as 'probationer'. He stated that in this illegal and malafide manner, the Employer illegally continued to term the Workman as a trainee and treated him as a temporary Workman. He stated that in fact, on completion of 240 days of continuous service with the Employer, he is entitled to permanency of service under the law as well as all the benefits available to permanent workmen including the protection of welfare status. He stated that from 01-04-1995, the Employer appointed him as a 'probationer' and illegally extended his probation periodically by various letters till 31-08-1998. He stated that he was in continuous and uninterrupted service of the Employer till 31-08-1998 when his services were illegally terminated by letter date 10-09-1998. He stated that he raised demand on the Employer to reinstate him in service from 31-08-1998 with full back wages and continuity in service, grant him status of permanent Workman with all benefits accruing to him due to permanent status from 18-06-1993 and compensation amounting to two days wages for every one day of enforced unemployment in view of the mental torture caused to him and his family. He stated that since the demand letter was not replied by the Employer, he raised an 'industrial dispute' by his letter dated 21-12-1998, before the Labour Commissioner which ended in failure.

3. He contended that the termination of his services is ex-facie illegal and untenable at law. He submitted that he was not terminated for any act of misconduct and therefore, his termination amounts to illegal retrenchment without following the mandatory provision of the I.D. Act relating to retrenchment. He submitted that no enquiry or charge-sheet was held/served on him before his services were terminated and that this act was in gross and flagrant violation of the Standing Orders which covers him and in violation of the principles of natural justice. He submitted that the Employer, in violation of the provisions of the I.D. Act, even though, he had completed a continuous period of 240 days in employment with the Employer, refused to treat him as its permanent Workman with all the benefits accruing to him due to permanent status. He submitted that he was denied all the benefits that other permanent workmen enjoyed. He submitted that the order of termination was not signed by any authorized person. He submitted that the order of termination is passed without hearing him and thereby, clearly violating the rules of natural

justice and therefore, is unfair and illegal. He submitted that his termination of services is clearly an act of unfair labour practice under Schedule V of the I. D. Act, 1947. The Workman therefore prayed that the action of the Employer is nothing short of unfair labour practices and victimization and further that it is illegal, improper, bad-in-law, unjustified and also malafide. He further prayed to direct the Employer to reinstate him in services with continuity in service and full back wages and other payment of compensation at the rates demanded for causing mental and physical torture to him and his family members. He finally prayed to direct the Employer to grant permanent status to him from 18-06-1993 with all benefits accruing to him from the date.

4. The Employer resisted the claim of the Workman by filing its written statement on 08-08-2001 at Exb. 5. The Employer, as and by way of its written statement, admitted that the Employer is engaged in the manufacture of tyres and have its factory at Usgao, Ponda-Goa. The Employer admitted that the Workman was employed with them as a 'trainee Workman' by letter dated 04-04-1994. The Employer stated that the Workman, was appointed in accordance with its Certified Standing Orders (CSO). The Employer stated that the Workman was a probationer who had not completed the period of probation. The Employer stated that the Workman was paid on daily wages at piece rate as per the scheme in force in the Employer Company. The Employer stated that the work performance, job knowledge and attendance of the Workman was found unsatisfactory and the Workman was kept informed about his poor work performance, vide his letter dated 01-10-1995 and letter dated 01-01-1996. The Employer stated that the Workman however, failed to improve his work performance during the above period and they once again extended the probation period of the Workman by further three months, vide letter dated 01-04-1996 to enable him to show improvement in his performance. The Employer stated that the Workman repeatedly failed to utilize the opportunity afforded to him despite several extensions of his probationary period to enable him to improve performance and continued to perform poorly. The Employer stated that the Workman was periodically informed by them about his poor work performance despite which he failed to show any improvement in his performance. The Employer stated that there were reports of unsatisfactory performance against the Workman with respect to work performance, work attendance and work attitude which were less than satisfactory. The Employer stated that however, to afford another opportunity to improve his performance, the

probationary term was further extended, vide letter dated 01-07-1996 and letter dated 01-10-1996. The Employer stated that despite several reminders to the Workman about his poor work performance from time to time, the Workman at no stage during the probationary period made any efforts to improve his performance and instead invited several reports of unsatisfactory performance from his department. The Employer stated that in furtherance to earlier opportunities given to the Workman to improve his performance, he was once again given opportunity and his probationary period was further extended vide letters dated 01-01-1997 and dated 01-06-1998. The Employer stated that despite all opportunities afforded to the Workman, no improvement was shown by him in terms of his work performance and the Employer was left with no other option than to terminate his services. The Employer stated that the services of the Workman were terminated by them by its letter dated 31-08-1998. The Employer stated that besides the poor work performance and job knowledge, the attendance of the Workman too, was unsatisfactory. The Employer stated that it is well settled that the termination of a probationer during the probationary period for unsatisfactory performance is perfectly legal and justified. The Employer stated that a probationer has no vested right to confirmation in service. The Employer submitted that neither enquiry nor charge-sheet was required before the termination of services of the Workman as he was a probationer and the probationary appointment was terminated on account of unsatisfactory performance. The Employer stated that the order of termination was signed by its Sr. General Manager, Mr. E. M. Mathai. The Employer stated that the demands made by the Workman were baseless and lack of any substance. The Employer submitted that the termination of services of the Workman is legal and justified. The Employer denied the overall case as pleaded by the Workman and prayed for rejection of the reference.

5. Thereafter, the Workman filed his Re-joinder on 05-05-2000 at Exb. 6. The Workman, by way of his Re-joinder, confirms and reiterates all the submissions and averments made by him in his claim statement to be true and correct and denies all the statements and averments made by the Employer in the Written Statement, which are contrary to the statements and averments made by him. He stated that the reports of unsatisfactory performance are false and were never brought to his notice nor was he ever issued any memo or show-cause notice or disciplinary action ever taken against him on the basis of the purported unsatisfactory performance.

6. Based on the pleadings of the parties hereinabove, the Hon'ble Presiding Officer, Industrial Tribunal and Labour Court framed the following issues on 16-06-2000 at Exb. 7 as well as framed additional issues on 10-07-2002 at Exb. 16.

1. Whether the Party I proves that the Party II terminated his services by way of victimization and unfair labour practice?

1A. Whether the Party I proves that he was a permanent Workman and hence is entitled to all the protection available to a permanent Workman under the Industrial Dispute Act, 1947?

2. Whether the Party I proves that the termination of his service by the Party II w.e.f. 31-08-1998 is illegal and unjustified?

3. Whether the Party II proves that the Party I was a probationer and his services were terminated in terms of his appointment letter dated 01-04-1995 on account of his unsatisfactory performance?

4. Whether the Party I is entitled to any relief?

5. What Award?

7. My answers to the aforesaid issues are as under:

- (a) Issue No. 1 : In the Negative.
- (b) Issue No. 2 : In the Negative.
- (c) Issue No. 3 : In the Affirmative.
- (d) Issue No. 4 and 5 : As per final order.

I have heard the oral arguments of Ld. Adv. Shri V. Menezes appearing for the Workman as well as Ld. Adv. Shri G. K. Sardessai appearing for the Employer. Adv. Shri G.K. Sardessai appearing for the Employer also filed synopsis of written arguments.

8. Ld. Adv. Shri V. Menezes, appearing for the Workman during the course of his oral arguments submitted that the Workman was initially appointed as 'Trainee' by the Employer by its letter dated 18-06-1992. He submitted that the services of the Workman as trainee was subsequently extended for three months by letter dated 13-12-1993. He submitted that by another letter dated 04-04-1994, the Workman was appointed as 'Trainee Operator' for a period of 12 months in Leave Reserve Department. He submitted that thereafter the Workman was appointed on probation as an 'Operator' in Leave Reserve Category for a period of six months vide letter dated 01-04-1995. He submitted that the probationary period of the Workman was extended from time to time by various letters such as letters dated 01-10-1995, 01-01-1996, 01-04-1996, 01-07-1996, 01-10-1996 and 01-06-1998. He submitted that the Workman was continuously working for 240 days without any break in service. He submitted that the Workman was not issued any

show-cause notice or memo regarding his work performance, job knowledge and attendance. He submitted that the Workman was falsely issued a warning letter dated 16-06-1998 for gross negligence of work and for not carrying his identity card while entering the factory premises on 24-02-1998 in shift 1. He submitted that no charge-sheet nor enquiry was conducted against the Workman before terminating his services. He submitted that the Workman was continuously working in the Employer factory till the date of his termination of services and as such he attained the status of a permanent Workman. He submitted that the Workman was not given any notice nor paid any notice pay nor retrenchment compensation at the time of termination of his services. He submitted that no reasons of whatsoever nature have been given by the Employer, while terminating his services by letter dated 31-08-1998. He submitted that his termination from services is illegal and unjustified. He submitted that the termination of services of the Workman amounts to victimization and unfair labour practices. He therefore, prayed that an award be passed holding that the termination of services of the Workman is illegal and unjustified and direct the Employer to reinstate the Workman in service with full back wages and continuity in service.

9. Per contra, Ld. Adv. Shri G.K. Sardessai, representing the Employer, during the course of his oral arguments submitted that indisputably, the Workman was initially appointed as 'trainee' by the Employer which was subsequently extended from time to time till 31-03-1995. He submitted that thereafter, the Workman was appointed as 'Probationer' in Leave Reserve Section vide its order dated 01-04-1996. He submitted that the probationary period of the Workman was extended from time to time till 01-06-1998 on account of his work performance, job knowledge and attendance were not found to be satisfactory. He submitted that despite all the opportunities afforded to the Workman, no improvement was shown by the Workman in terms of his work performance and they were left with no other option than to terminate the services of the Workman. He submitted that accordingly the services of the Workman were terminated by letter dated 31-08-1998. He submitted that the services of the Workman were terminated on account of his poor performance in terms of Clause 1 of his appointment order. He submitted that a probationer has no vested right to confirmation in service. He submitted that the Employer is governed by its own Certified Standing Orders. He submitted that Clause 3 of the CSO defines the categories of the Workman, such as permanent, probationer,

temporary, casual, apprentice and trainee. He submitted that as per the definition of probationer' under the CSO a probationer is one who is provisionally employed to fill a permanent vacancy and who has not completed a period of probation and that the confirmation of services of a probationer shall be in writing and in the absence of such written order, the Workman shall be deemed to continue to be on probation. He submitted that it is well settled that the termination of a probationer during a probationary period for unsatisfactory performance is perfectly legal and justified. He submitted that a probationer has no vested right to confirmation in service. He submitted that neither enquiry nor charge-sheet was required before termination of services of the Workman as he was a probationer and the probationary appointment was terminated on account of unsatisfactory performance. He submitted that whether or not a probationary employees services are satisfactory or not, it is for the Employer to decide the same and this court cannot substitute its view for that of the Employer with respect to satisfactory services or otherwise of employees with the Employer. In support of his oral contentions, *Ld. Adv. Shri G.K. Sardesai* relied upon the following judgments of Supreme Court of India.

a) In the case of *Progressive Education Society v/s. Rajendra* reported in (2008) 3 SCC 310,

(b) In the case of *Suresh Chand Jain v/s. Director General and Anr.*, delivered on 11 February, 2015 in WP(C) 5603 of 2013 of Hon'ble High Court of Delhi,

(c) In the case of *Chaitanya Prakash v/s. H. Omkarappa*, reported in (2010) 2 SCC 623 and

(d) In the case of *Oswal Pressure Die Casting Industry v/s. Presiding Officer and Anr.*, 1998 (2) LLN 67.

10. He submitted that the Workman filed an application for amendment claiming to have attained permanent status by virtue of his length of services and perennial employment. He submitted that the Hon'ble Industrial Tribunal did not express any views on the merits on scope of reference and proceeded on the basis that the issue as regard the scope of reference shall be adjudicated after the amendment is granted. He submitted that the Tribunal proceeded on the basis that on the stage of passing the order what has to be considered is whether amendment is to be granted notwithstanding the delay and not whether the amended pleadings is beyond the scope of the reference and that the issue as regards the scope of the Tribunal to deal with this amended pleadings shall be adjudicated at the time of

considering the matters on merits. He submitted that the terms of reference is confined to legality and justification of the Employer in terminating the services of the Workman. He submitted that the terms of reference does not refer to the claim for permanency. He submitted that the claim for permanency and regularization is a separate industrial dispute. He submitted that the Industrial Tribunal/Labour Court constituted under the Industrial Disputes Act is a creature of that statute. He submitted that it acquires jurisdiction on the basis of reference made to it and that the Tribunal has to confine itself within the scope of the subject matter of reference and cannot travel beyond the same. He submitted that the claim of the Workman for permanency is beyond the scope of reference and is thus, beyond the limited jurisdiction of this Tribunal to adjudicate. In support of his oral contention, he relied upon the following judgments of the Hon'ble Apex Court:

(a) In the case of *National Engineering Industries Ltd. v/s. State of Rajasthan and Ors.*, reported in 2000 (1) SCC 371,

(b) In the case of *Sindhu Re-settlement Corporation Ltd. v/s. Industrial Tribunal of Gujrat and Ors.*, reported in (1968) 1 LLJ 834 SC

(c) In the case of *Delhi Cloths and Genral Mills Co. Ltd. v/s. The Workmen and Ors.*, reported in 1967 AIR 469 and

(d) In the case of *Firestone Tyre and Rubber Co. v/s. Workmen*, reported in 1981 (II) LLJ218.

11. He submitted that the termination of services of the Workman on account of his unsatisfactory performance is a termination simplicitor and it does not attract the provisions of retrenchment within the meaning of Section 2 (oo) of the I.D. Act, 1947. He submitted that the termination of the Workman is in accordance with the terms of his appointment and it is fair, legal and proper. He therefore, submitted that this Hon'ble Tribunal be pleased to hold that the termination of the Workman is legal and justified.

Issue No. 1A:

I am deciding the issue No. 1A prior to the issue No. 1 as the said issue No.1A goes to the root jurisdiction of the reference.

12. The Employer is governed by its Certified Standing Orders (Exb. E-1). Clause 3 of the said CSO classifies the categories of the Workman as permanent, probationer, temporary, casual and apprentice and trainee. In terms of sub-clause (a) of Clause 3 of the CSO, 'Permanent Workman' is a Workman engaged on permanent basis and includes a Workman who has satisfactorily completed the probationary period and whose appointment has

been confirmed in writing. Similarly, in terms of sub-clause (b) of Clause 3 of the CSO, a 'Probationer' is one who is provisionally employed to fill a permanent vacancy and who has not completed a period of probation and that confirmation of services of a probationer shall be in writing and in the absence of such written order, the Workman shall be deemed to continue on probation. If a permanent Workman is employed as a probationer in new post, he may at any time at the discretion of the Manager during the probationary period or the extended probationary period or on expiry thereof be reverted to his original previous post.

13. In the case in hand, the Workman was initially appointed as a 'trainee' by the Employer, vide its letter dated 18-06-1993 (Exb. W1) for a period of three months. Again the Workman was appointed as 'trainee' for a further period of three months, vide its another order dated 13-01-1993 (Exb. W2). The Workman was further appointed as a 'trainee operator' for a period of 12 months, vide order dated 04-04-1994 (Exb. W3). The Workman was further appointed on probation as an 'Operator' in Leave Reserve Category for a period of six months on daily wages on piece rate as per the scheme in force in the establishment, vide order dated 01-04-1995 (Exb. W5). The said probationary period of the Workman was extended for three months, vide order dated 01-10-1995, 01-01-1996, 01-04-1996, 01-07-1996, 01-10-1996 and order dated 01-06-1998 (Exb. W-6-colly).

14. Thus, the Workman was in continuous employment of the Employer on probation for a period from 01-10-1995 till the termination of his services w.e.f. 31-08-1998. Ld. Adv. Shri V. Menezes, representing the Workman, during the course of his oral arguments submitted that the Workman was a permanent Workman in view of his continuous service of more than 240 days. However, I do not find any merits in the submissions of Ld. Adv. Shri V. Menezes, appearing for the Workman, as sub-clause (a) and sub-clause (b) of Clause 3 of the CSO of the Employer clearly defines the permanent as well as probationary Workman. In view of above, it is held that the Workman was on probation for a period from 01-10-1995 till the termination of his services w.e.f. 31-08-1998. Nothing has been produced on record by the Workman to show that he was confirmed in the services in writing. Similarly, there is nothing on record to establish that after completion of 240 days of service, the Workman attains permanency. Merely, length of service of the Workman does not transform him to a permanent Workman. Hence, it is held that the Workman failed to prove that he was a permanent Workman and he is entitled to all the protection

available to a permanent Workman under the Industrial Disputes Act, 1947. The issue No. 1A is therefore answered in the negative.

Issue No. 2 and 3:

15. I am deciding the issue No. 2 and 3 simultaneously as both the said issues are co-related to each other.

While deciding the issue No.1A hereinabove, I have discussed and come to the conclusion that the Workman was employed on probation till the date of termination of his services.

16. The Employer produced on record a copy of termination order issued to the Workman. The termination order of the Workman dated 31-08-1998 indicates that the probationary appointment of the Workman stands terminated after close of work on 31-08-1998 as per Clause 1 of his probationary appointment letter dated 01-04-1995. Clause 1 of the probationary appointment issued to the Workman at Exb.W-5 states that "the Company may at its discretion extend your period of probation for a further period. While on probation your services can be terminated without notice and assigning any reasons thereof Clause 25 of the CSO of the Employer provides for termination of services."

17. The Workman was in the employment of the Employer as a probationer till the date of his termination w.e.f. 31-08-1998. Upon careful perusal of every extension of the probationary order of the Workman at Exb.W-6-colly, it has been stated that his work performance, job knowledge and attendance are not found to be satisfactory and hence, he was advised to show marked improvement in his work performance, job knowledge and attendance. The Employer terminated services of the Workman by stating that his probationary appointment stands terminated after close of work on 31-08-1998 as per the Clause 1 of his probationary appointment letter dated 01-04-1995.

18. In the case of **Progressive Education Society (supra)**, the Hon'ble Apex Court, in para 37 of its judgment held as under:

"37. The law with regard to termination of the services of a probationer is well established and it has been repeatedly held that such a power lies with the appointing authority which is at liberty to terminate the services of the probationer if it finds the performance of the probationer to be unsatisfactory during the period of probation. The assessment has to be made by the appointing authority itself and the satisfaction is that of the appointing authority as well. Unless a stigma is attached to the termination or the probationer is

called upon to show cause for any shortcoming which may subsequently be the cause for termination of the probationer's service, the management or the appointing authority is not required to give any explanation or reason for terminating the services except informing him that his services have been found to be unsatisfactory."

19. In the case of **Suresh Chand Jain (supra)**, the Hon'ble Apex Court in para 38 of its judgment held as under:

"38. The Delhi High Court at para 25 observed that "Thus in the light of the aforesaid legal position, it can be concluded that this issue is no more res integra that an order of termination due to unsatisfactory performance of the probationer, cannot be ipso facto termed as 'stigmatic' or 'punitive' in nature. During the probation period, an employee has to be extra careful and diligent while discharging his assigned duties, so that he can successfully complete his probation period to get confirmation against the post he has been selected for and he does not give any chance or reason to his superiors to terminate his services. Any kind of insufficiency, negligence, indiscipline or misconduct can prove fatal to an employee on probation. Before the probationer is confirmed, the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. If during the period of probation, the performance of the probationer is not found satisfactory or suitable for a particular job, as per the assessment of the Employer, he may be terminated from the service and such termination would be termed as termination 'simpliciter' and cannot be held to be 'punitive' in nature."

20. In the case of **Oswal Pressure Die Casting Industry (supra)**, the Hon'ble Apex Court in para 40 of its judgment held as under:

"40. The Supreme Court set aside the orders of Labour Court and High Court and held that, "it was not the case of the respondent that the action of the Employer was malafide. The Labour Court had also not held that the satisfaction of the management was vitiated by malafides. It had struck down the order of termination on the ground that it was stigmatic and, therefore it could not have been passed without holding a domestic inquiry. The High Court rightly did not accept that finding. What the High Court failed to appreciate was that it was not open to it to sit in appeal over the assessment made by the Employer of the performance of the employee. Once it was found that the assessment made by the Employer was supported by some material and was not malafide it

was not proper for the High Court to interfere and substitute its satisfaction with the satisfaction of the Employer. The High Court was also wrong in holding that in order to support its satisfaction it was necessary for the appellant to produce some reports or communication or other evidence to show that performance of the respondent was below the expected norms. We find that the whole approach of the High Court was wrong and, therefore, the order passed by it will have to be set aside".

21. In the case of **Chaitanya Prakash (supra)**, the Hon'ble Apex Court in para 39 of its judgment held as under:

"39. The service of the probationer was terminated as he failed to improve upon his misconduct in spite of he having been informed repeatedly, during the period of his probation, about his deficiency. The Hon'ble Apex Court held that the termination of such an employee was termination 'simpliciter' due to unsatisfactory conduct/performance and not a case of 'punishment' for misconduct".

22. Thus, it is settled law that whether or not a probationary employees services are satisfactory or not, it is for the Employer to decide the same and this court cannot substitute its view for that of the Employer with respect to satisfactory services or otherwise of employees with the Employer. It is also crystal clear that termination of services of a probationer on the ground of unsatisfactory performance of service is termination simplicitor and does not amount to casting a stigma on the concerned employee.

23. In the case in hand, the Workman was on probation till the date of termination of his services. The terms and conditions of services of the Workman with the Employer as stated in clause 1 of the contract of services during the probationary period, a probationer can be terminated without assigning any reason. As the Employer was not satisfied with the services of the Workman, it has terminated the services of the Workman in terms of clause 1 of the appointment order. No charge-sheet or enquiry was required to conduct while terminating the services of the Workman as it amounts to termination simplicitor. Hence, it is held that the Employer proved that the services of the Workman was a probationer and his services were terminated in terms of his appointment letter dated 01-04-1995 on account of his unsatisfactory performance. The appointment letter as well as termination letter of the Workman has been signed by the Sr. General Manager, Shri E. M. Mathai, who is competent to sign the same in terms of CSO.

Ld. Adv. Shri V. Menezes, representing the Workman submitted that the termination of services of the Workman amounts to illegal retrenchment.

24. In the case of **Escorts Limited v/s. Presiding Officer and Anr., reported in (1997) 11 SCC 521**, Workman was appointed on temporary basis for a period of two months. The terms of appointment enabled the Employer to terminate the services at any stage without assigning any reason. The Supreme Court held that the termination of services under the said terms even though effected before the expiry of the specified period, did not amount to retrenchment. Consequently, Section 25-F and 25-G of the Act did not come into play.

25. In the case of **Kalyani Sharp India Ltd. v/s. Labour Court 1 Gwalior and Anr., reported in (2002) 9 SCC 655**, Workman has terminated during the period of probation. The Labour Court as well as the High Court took a view that termination amounted to retrenchment for non-compliance of Section 25-F of the Industrial Disputes Act. The Supreme reversed the views of the Labour Court and the High Court and observed thus:

"6. The order of employment itself clearly sets out the terms thereafter which makes it clear that the facility of providing training to him could be put to an end at any time without assigning any reason whatsoever and his services could be regularized only on satisfactory completion of his training. If these clauses are read together, it is clear he was under probation during the relevant time and if his services are not satisfactory, the same could be put an end to. It is clear that the respondent had been appointed as a Trainee Service Technician and for a period he had to undergo the training to the satisfaction of the appellant and if his work was not satisfactory during that period the facility could be withdrawn at any time and he would be regularized only on completion of his training. Thus, the respondent's services were terminated before expiry of the probationary period. In such a case, question of issue of notice before terminating the service as claimed by the respondent does not arise. Escorts case [(1997) 11 SCC 521:1998 SCC (L&S) 235] is identical with the present case. Following the said decision and for the reasons stated therein these appeals are allowed. The order made by the High Court affirming the award made by the Labour Court is set aside and the claim made by the respondent is dismissed."

26. The principle laid down by the Hon'ble Apex Court in its aforesaid judgment is applicable to the case in hand. Applying the law laid down, by the Hon'ble Apex Court, it is held that the termination of

services of the Workman does not amounts to retrenchment within the meaning of Section 2 (oo) of the Act and it is covered by Clause (bb) of Section 2 (oo) of the Act and as such Section 25-F of the Act is not attracted in the present case. Hence, I do not find any merits in the submissions of Ld. Adv. Shri V. Menezes that the termination of services of the Workman amounts to illegal retrenchment and hence, it is rejected. It is held that the termination of the services of the Workman is legal and justified. The issue No. 2 is therefore answered in the negative and issue No. 3 is answered in the affirmative.

Issue No. 1:

27. The Workman alleged that his services have been terminated by the Employer by way of victimization and it amounts to unfair labour practice. The Workman has to prove the aforesaid allegation.

While deciding the issue No. 2, I have discussed and come to the conclusion that the termination of services of the Workman is legal and justified. similarly, while deciding the issue No. 3 hereinabove, I have discussed and come to the conclusion that the Workman was a probationer and his services were terminated in terms of his appointment letter dated 01-04-1995.

28. The burden was cast on the Workman to prove that his services have been terminated by way of victimization and it amounts to unfair labour practice.

The term 'unfair labour practice' has been defined in Vth Schedule of the Act and it reads as under:

1. On the part of the Employers and trade unions of the Employers....

1. 1.....

2.....

3.....

4.....

5. To discharge or dismiss workmen.....

(a) By way of victimization.

(b) Not in good faith, but in colourable exercise of the Employer's right.

(c) By falsely implicating a Workman in a criminal case on false evidence or on concocted evidence;

(d) For patently false reasons;

(e) On untrue or trumped up allegation of absence without leave;

(f) In utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) For misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the Workman, thereby leading to a disproportionate punishment.

29. The Workman has however, failed to prove any of the aforesaid acts. Consequently, the Workman failed to prove that his services have been terminated on account of victimization and it amounts to unfair labour practice. Hence, it is held that the Workman failed to prove that his services have been terminated on account of victimization and it amounts to unfair labour practice. The issue No.1 is therefore answered in the negative.

Issue No. 4:

30. While deciding the issue No. 2 hereinabove, I have discussed and come to the conclusion that the termination of services of the Workman is legal and justified. The Workman is not entitled to any relief. The issue No. 4 is therefore answered in the negative.

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that the action of the management of M/s. MRF Limited, Usgao, Ponda-Goa, in terminating the services of Shri Sameer V. Naik, with effect from 31-08-1998, is legal and justified.
2. The Workman, Shri Sameer V. Naik, is therefore not entitled to any relief.
3. No order as to costs.

Inform the Government accordingly.

Sd/-

(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Department of Public Health

Order

No. 4/16/2001-II/PHD/Part I/286

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/30(1)/2022/507 dated 31-01-2022, Government is pleased to promote Dr. Vaishali Joshi, Associate Professor to the post of Professor in the Department of Paediatrics in Goa Medical College and Hospital, Bambolim on regular basis in the Level 13 of Pay

Matrix and other allowances to be fixed as per rules with immediate effect.

The promotion is made against the vacancy occurred due to retirement on superannuation of Dr. M. P. Silveira, Professor and Head, Department of Paediatrics, Goa Medical College, Bambolim-Goa on 30-09-2021.

By order and in the name of the Governor of Goa.

Trupti B. Manerkar, Under Secretary (Health).

Porvorim, 14th March, 2022.

Department of Transport
Directorate of Transport

Order

No. D.Tpt/EST/285-V/2022/628

On the recommendation of the Goa Public Service Commission, Panaji conveyed vide their letter No. COM/II/11/49(1)/2015/503 dated 31-01-2022, the Government is pleased to promote the below mentioned Officer to the post of Assistant Director of Transport (Group 'B' Gazetted) in the Pay Band of Rs. 9300-34800+4600(G.P) corresponding to Level 7 of the Pay Matrix on regular basis with immediate effect and post him as detailed hereunder:-

Sr. No.	Name of the Officer	Posting on promotion
1.	Shri Cedric J. Souza Cordeiro	Assistant Director of Transport, Canacona-Goa.

The above said Officer shall be on probation for a period of two years.

By order and in the name of the Governor of Goa.

Rajan Satardekar, Director & ex officio Addl. Secretary (Transport).

Panaji, 14th March, 2022.

Order

No. D.Tpt/EST/285-V/2022/629

On the recommendation of the Goa Public Service Commission, Panaji conveyed vide their letter No. COM/II/11/49(1)/2015/503 dated 31-01-2022, the Government is pleased to promote Shri Rajesh L. Shetye, Motor Vehicles Inspector to the post of Assistant Director of Transport (Group 'B' Gazetted)

in the Pay Band of Rs. 9300-34800 + 4600 (G.P.) corresponding to Level 7 of the Pay Matrix on "Officiating basis" against the 01 ST vacancy till eligible ST Officers come in the zone of consideration.

On promotion, Shri Rajesh L. Shetye shall be posted as Assistant Director of Transport, Quepem-Goa.

By order and in the name of the Governor of Goa.

Rajan Satardekar, Director & ex officio Addl. Secretary (Transport).

Panaji, 14th March, 2022.

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Department of Urban Development
(Municipal Administration)

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Order

No. 3-2-UDD/MUN/ENG/2021/3332

On the recommendation of the Departmental Promotion Committee, the following Municipal Engineers Grade III are promoted to the post of Municipal Engineer Grade II on regular basis in the Pay Matrix Level 7 with immediate effect:

1. Shri Sachin K. Ambe.
2. Shri Vishant M. Naik.
3. Shri Shrikant V. Lawande.
4. Shri Subhash G. Mhalsekar.

By order and in the name of the Governor of Goa.

Gurudas P. Pilarnekar, Director & ex officio Addl. Secretary (Municipal Administration/Urban Development).

Panaji, 8th December, 2021.

Government Printing Press

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